

By: Springer

H.B. No. 1877

A BILL TO BE ENTITLED

AN ACT

relating to civil and criminal liability for the disclosure of certain visual material on the Internet; creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 98B to read as follows:

CHAPTER 98B. LIABILITY FOR DISCLOSURE OF CERTAIN VISUAL MATERIAL ON INTERNET

Sec. 98B.001. DEFINITIONS. In this chapter:

(1) "Intimate parts" means the naked genitals, pubic area, anus, buttocks, or female nipple of a person.

(2) "Intimate visual material" means visual material that depicts a person:

(A) with the person's intimate parts exposed; or

(B) engaged in sexual conduct.

(3) "Sexual conduct" has the meaning assigned by Section 43.25, Penal Code.

(4) "Visual material" has the meaning assigned by Section 43.26, Penal Code.

Sec. 98B.002. LIABILITY FOR DISCLOSURE OF CERTAIN INTIMATE VISUAL MATERIAL ON INTERNET. A defendant is liable, as provided by this chapter, to a person depicted in intimate visual material for damages arising from the placement of the material on the Internet

1 if the defendant intentionally engaged in conduct that violates
2 Section 21.16, Penal Code, with respect to the material.

3 Sec. 98B.003. DAMAGES. A claimant who prevails in a suit
4 under this chapter is entitled to recover:

- 5 (1) actual damages;
- 6 (2) court costs; and
- 7 (3) reasonable attorney's fees.

8 Sec. 98B.004. INJUNCTIVE RELIEF. A court in which a suit is
9 brought under this chapter, on the motion of a party, may issue a
10 temporary restraining order or a temporary or permanent injunction
11 to restrain and prevent the placement of intimate visual material
12 on the Internet with respect to the person depicted in the material.

13 Sec. 98B.005. CAUSE OF ACTION CUMULATIVE. The cause of
14 action created by this chapter is cumulative of any other remedy
15 provided by common law or statute.

16 Sec. 98B.006. LIBERAL CONSTRUCTION AND APPLICATION;
17 CERTAIN CONDUCT EXCEPTED. (a) This chapter shall be liberally
18 construed and applied to promote its underlying purpose to protect
19 persons from, and provide adequate remedies to victims of, unlawful
20 placement of intimate visual material on the Internet.

21 (b) This chapter does not apply to a claim brought against
22 an interactive computer service, as defined by 47 U.S.C. Section
23 230, for conduct that consists only of a disclosure of intimate
24 visual material provided by another person.

25 SECTION 2. Chapter 21, Penal Code, is amended by adding
26 Section 21.16 to read as follows:

27 Sec. 21.16. UNLAWFUL DISCLOSURE OF CERTAIN VISUAL MATERIAL

1 ON INTERNET. (a) In this section:

2 (1) "Intimate parts" means the naked genitals, pubic
3 area, anus, buttocks, or female nipple of a person.

4 (2) "Sexual conduct" has the meaning assigned by
5 Section 43.25.

6 (3) "Visual material" has the meaning assigned by
7 Section 43.26.

8 (b) A person commits an offense if:

9 (1) the person intentionally causes emotional
10 distress to another person by intentionally placing on the Internet
11 visual material depicting the other person:

12 (A) with the other person's intimate parts
13 exposed; or

14 (B) engaged in sexual conduct;

15 (2) the person knows that the depicted person did not
16 consent to the placement of the visual material on the Internet;

17 (3) the visual material was obtained by the person or
18 created under circumstances in which the depicted person had a
19 reasonable expectation that the visual material would remain
20 private; and

21 (4) the placement of the visual material on the
22 Internet, including any accompanying or subsequent information or
23 material related to the visual material, reveals the identity of
24 the depicted person in any manner, including by:

25 (A) the content of the visual material;

26 (B) information or material accompanying the
27 visual material; or

1 (C) information or material provided by a third
2 party in response to the person's placement of the visual material
3 on the Internet.

4 (c) It is a defense to prosecution under this section that:

5 (1) the visual material placed on the Internet depicts
6 only a voluntary exposure of intimate parts or sexual conduct in a
7 public or commercial setting; or

8 (2) the actor is an interactive computer service, as
9 defined by 47 U.S.C. Section 230, and the conduct consisted only of
10 a disclosure of visual material provided by another person.

11 (d) An offense under this section is a felony of the third
12 degree.

13 SECTION 3. (a) Chapter 98B, Civil Practice and Remedies
14 Code, as added by this Act, applies only to a cause of action that
15 accrues on or after the effective date of this Act. A cause of
16 action that accrues before the effective date of this Act is
17 governed by the law in effect immediately before that date, and that
18 law is continued in effect for that purpose.

19 (b) Section 21.16, Penal Code, as added by this Act, applies
20 to visual material placed on the Internet on or after the effective
21 date of this Act, regardless of whether the visual material was
22 obtained by the actor or created before, on, or after that date.

23 SECTION 4. This Act takes effect September 1, 2015.